

July 22, 2016

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Notice of Ex Parte Presentation

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 12-375, Inmate Calling Service

Dear Ms. Dortch:

On July 20, 2016, Vincent Townsend, President of Pay Tel Communications, Inc. ("Pay Tel"), and Marcus Trathen of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, regulatory counsel to Pay Tel, met with Claude Aiken, Legal Advisor to Commissioner Clyburn; Stephanie Weiner, Legal Advisor to Chairman Wheeler; Madeleine Findley, Deputy Bureau Chief of the Wireline Competition Bureau; and Gil Strobel, Deputy Division Chief, Pricing Policy Division of the Wireline Competition Bureau.

The purpose of the meeting was to discuss the Fact Sheet issued on July 14, 2016 in the above-referenced docket announcing that Chairman Wheeler and Commissioner Clyburn have circulated a proposed order on reconsideration proposing to increase the applicable rate caps set forth in the Second Report and Order, with the increases tied to demonstrated costs incurred by facilities in providing access to ICS. Pay Tel advocated for clarification of the relationship between the proposed rate additives and the payment of site commissions to confinement facilities. Specifically, Pay Tel urged the Commission to clarify that a per-minute fee, not to exceed the additive, may be collected by ICS providers and remitted to facilities in lieu of other payments. This approach could be implemented through a regulatory directive or through a rebuttable presumption. This clarification will enhance welfare and serve the public interest by helping to align the interests of facilities with consumers as facilities will seek to maximize revenue recovery by forcing providers to compete based on lowering rates to consumers; will help to address flaws in the Commission's previous approach; and will help deter litigation and create a regulatory environment that is more conducive to long-term stability. Pay Tel expressed its support for comprehensive, lasting ICS reform, and reiterated that addressing the issue of facility compensation was critical to achieving this reform.

Enclosed are Talking Points that summarize Pay Tel's position concerning the Fact Sheet.

No hand-outs or other documents were presented during the meeting.

In accordance with Section 1.1206 of the Commission's rules, this letter is submitted for inclusion in the record of the above-captioned proceeding.

Please do not hesitate to contact the undersigned should any questions arise concerning this notice.

Sincerely yours,

/s/ Marcus W. Trathen

Marcus W. Trathen

cc: Claude Aiken (via email)
Stephanie Weiner (via email)
Madeleine Findley (via email)
Gil Strobel (via email)

Talking Points Concerning FCC Fact Sheet

- The FCC has said, repeatedly, that the cost of site commissions cannot be passed on to consumers.
- The FCC's Fact Sheet proposes to increase the applicable ICS caps by amounts which approximate average demonstrated costs incurred by facilities in making ICS available to inmates.
- The Fact Sheet suggests a path forward that could facilitate lasting ICS reform by making clear in the order that:
 - 1) A per-minute fee, not to exceed the additive specified in the Fact Sheet, may be remitted to facilities to recover costs incurred in making ICS available.**
 - 2) Any amounts paid by providers to facilities in excess of the additive is either prohibited or presumptively an unreasonable practice under Section 201(b) of the Act.**
- These clarifications will enhance welfare and serve the public interest by helping to align the interests of facilities with consumers as facilities will seek to maximize revenue recovery by forcing providers to compete based on lowering rates to consumers.
- The FCC has a well-established history of regulating contractual arrangements entered into by regulated entities that have a detrimental impact on the public interest. Here, the FCC has made extensive findings, based on a robust record, of a connection between site commissions and the problems the Commission seeks to address in the proceeding.
- Applying a presumption, if providers wish to pay monies to facilities in excess of the amounts authorized, they should be prepared to demonstrate, at their own risk, that the amounts are being paid from profits and not borne by consumers.
- Permitting the additive to be remitted to facilities adds much needed clarity to the FCC's regulations. If the additive is not reserved for potential facility compensation, how does a provider show that the cost of commission is not included in the rate? The FCC has not articulated any methodology for allocating costs to a particular facility and the payment of any commission entails regulatory and litigation risk for providers and facilities.
- This is not an assertion of authority over confinement facilities, but rather it is an extension of actions the FCC has already taken to reduce site commissions. The FCC has stated that commissions cannot be recovered from consumers, and has adopted rate caps to constrain the funds available to pay site commissions, so the FCC has already take regulatory action impacting revenues to facilities.
- Without clarity in this area the FCC has created enormous uncertainty over what and what cannot be paid to facilities. Uncertainty deters investment and breeds litigation. Both providers and facilities crave certainty.